

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

<b>COREY D. SMITH,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>No. CIV-21-822-R</b>
	)	
<b>S.R. GRANT,</b>	)	
	)	
<b>Respondent.</b>	)	

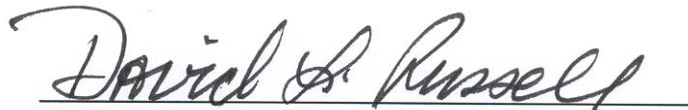
**ORDER**

Petitioner filed this action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Pursuant to 28 U.S.C. § 636(b)(1)(B) and (C) the matter was referred to United States Magistrate Judge Shon T. Erwin for preliminary review. On September 27, 2021, Judge Erwin issued a Report and Recommendation wherein he recommended the Court dismiss the petition for lack of jurisdiction. (Doc. No. 10). The matter is currently before the Court on Petitioner's timely objection to the Report and Recommendation (Doc. No. 11) which gives rise to the Court's obligation to undertake a *de novo* review of those portions of the Report and Recommendation to which Petitioner makes specific objection. Having undertaken this review, the Court finds as follows.

In his Objection Mr. Smith argues that he was convicted on a defective indictment, the government having charged a crime that does not exist. This objection fully supports the conclusion set forth by Judge Erwin, that Petitioner is seeking to challenge his conviction from the Northern District of Mississippi rather than challenging the execution of his sentence. The proper avenue for the challenge raised by Mr. Smith is via a motion to

vacate pursuant to 28 U.S.C. § 2255, and Mr. Smith currently has such a motion pending in the court of conviction. There is no basis from his objection for modification or rejection of the Report and Recommendation and accordingly, it is hereby ADOPTED in its ENTIRETY and the Petition is DISMISSED for lack of jurisdiction.

**IT IS SO ORDERED** this 18<sup>th</sup> day of October 2021.

  
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DAVID L. RUSSELL  
UNITED STATES DISTRICT JUDGE